

## **REMARKS**

Claims 1 – 14 are presented for reconsideration and further examination in view of the foregoing amendments and the following remarks.

In the outstanding Office Action the Examiner withdrew all of the rejections set forth in the Office Action dated July 2, 2003, rejected claims 1 – 2 and 10 under 35 U.S.C. §102(b) as being anticipated by U.S. patent no. 4,357,384 to Jasperson (hereinafter referred to as “the Jasperson ‘384 patent”); rejected claims 1 – 3 under 35 U.S.C. §103(a) as being unpatentable over the Jasperson ‘384 patent; rejected claims 1 and 4 – 6 under 35 U.S.C. §103(a) as being unpatentable over the Jasperson ‘384 patent in view of U.S. patent no. 3,775,916 to Bair (hereinafter referred to as “the Bair ‘916 patent”) in further view of U.S. patent no. 4,620,404 to Rizk (hereinafter referred to as “the Rizk ‘404 patent”); rejected claims 1, 4, and 7 under 35 U.S.C. §103(a) as being unpatentable over the Jasperson ‘384 patent in view of the Bair ‘916 patent; rejected claims 1, 4 and 8 – 9 in view of the Jasperson ‘384 patent in view of the Bair ‘916 patent in further view of U.S. patent no. 5,826,389 to Siler (hereinafter referred to as “the Siler ‘389 patent”); and rejected claims 1 and 11 under 35 U.S.C. §103(a) as being unpatentable over the Jasperson ‘384 patent in view of U.S. patent no. 4,617,219 to Schupack (hereinafter referred to as “the Schupack ‘219 patent”).

By this Response and Amendment, the Examiner’s 35 U.S.C. §§ 102(b) and 103(a) rejections are traversed, claim 1 is amended to clarify the invention, and method claims 12 – 14 are newly added. Support for the new method claims is found on page 3, lines 11 – 29 of the original application. It is respectfully submitted that no new matter within the meaning of 35 U.S.C. §132 has been added.

### **Rejection Under 35 U.S.C. §102(b)**

The Examiner rejected claims 1, 2 and 10 as being anticipated by the Jasperson '384 patent.

### **Response**

By this Response and Amendment, the Examiner's rejections of claims 1, 2 and 10 are respectfully traversed.

For a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claims is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. V. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must also be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

The presently claimed invention, as recited in claim 1, is directed to a structural wall panel that comprises spaced apart face panels of a cementitious material with a support frame comprised of a same cementitious material continuous with the cementitious material of the face panels and disposed therebetween. In a preferred embodiment, as depicted in Fig. 3, the recited support frame is represented by element 16 (referred to in the specification as "ribs").

The cementitious support frame material is continuous with the face panels due, in part, to the method used to form the support frame. As recited in newly added method claims 12 – 14, cementitious material is poured into a mold such that the first and second face panels and the

support frame are all formed of the same cementitious material. The face panels are in continuous contact with the support frame. According to claims 12 – 14, it is not necessary that the pouring of cementitious material ever stop. Thus, not only can the material itself be continuous, but the method of forming the material can be continuous as well.

Contrastingly, Jasperson generally teaches a composite structure having an interior substrate, a layer of rigid insulation, and a layer of cementitious material. However, nowhere in the cited reference, does Jasperson teach a support frame or ribs that are disposed between and having a same cementitious material that is continuous with the cementitious material of the first and second face panels.

As anticipation requires that all elements of a claim be present either literally or inherently in the prior art, the Examiner has not established that Jasperson anticipates the present invention. A support frame having cementitious material that is continuous with the face panels as recited in claim 1 is simply not present in the cited prior art. As such, claim 1 is patentable over the cited prior art.

Moreover, since claims 2 and 10 depend directly or indirectly from claim 1, they contain all of the limitations thereof. Thus, claims 2 and 10 are patentable over the cited prior art for at least the same reasons as claim 1. Accordingly, reconsideration and withdrawal of the rejections is respectfully requested.

#### **Rejection Under 35 U.S.C. §103(a): Jasperson**

The Examiner rejected claims 1 – 3 as being unpatentable over the Jasperson '384 patent.

## Response

By this Response and Amendment, the Examiner's rejections of claims 1 – 3 and 10 are respectfully traversed.

The argument made with respect to the rejections of claims 1, 2 and 10 under §102(b) is herein incorporated by reference.

To establish a *prima facie* case of obviousness, the Examiner must establish: (1) that some suggestion or motivation to modify the references exists; (2) a reasonable expectation of success; and (3) that the prior art references teach or suggest all of the claim limitations. *Amgen, Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

Since the cited prior art neither teaches nor suggests all of the limitations of claim 1, namely a support frame with a same cementitious material that is continuous with the cementitious material of the first and second face panels, claim 1 is not rendered obvious and is therefore patentable thereover. Since claims 2 – 3 ultimately depend from amended claim 1, they contain all of the limitations thereof and are likewise patentable over the cited references. Accordingly, reconsideration and withdrawal of the rejections is respectfully requested.

### **Rejection Under 35 U.S.C. §103(a): Jasperson in View of Bair and Further in View of Rizk**

The Examiner rejected claims 1 and 4 – 6 as being unpatentable over the Jasperson '384 patent in view of the Bair '916 patent in further view of the Rizk '404 patent.

## Response

By this Response and Amendment, Applicants respectfully traverse the Examiner's rejection.

The argument made above with respect to the rejections of claims 1, 2 and 10 under §102 and with respect to the rejections of claims 1 – 3 under 35 U.S.C. §103(a) are incorporated herein by reference.

As stated above, the Examiner has not shown that the Jasperson '384 patent contains all of the limitations of independent claim 1, namely a cementitious support frame that is continuous with a same cementitious material of the first and second face panels as claimed in independent claim 1.

The Bair '916 patent does not make up for the deficiencies of the Jasperson '384 patent. The Bair '916 patent teaches a multi-layer wall panel that has a sandwich construction comprising an outer layer of masonry building units, a principally load-bearing layer of cementitious material, and an insulating layer. More particularly, as shown in Figs 3 – 4, an outer masonry layer 10 is mounted on a load bearing cementitious layer 11. An insulating layer 12 is mounted to a face of the cementitious layer opposite masonry layer 10. Vertical and horizontal support beams 18 and 20, disposed along sides of the panel, are mounted to a face of the cementitious material opposite the masonry layer, within the depth of the insulating layer (*see* col. 2, line 67 – col. 3 line 6). However, the Bair '916 patent nowhere discloses a support frame that is formed of a same fiber-reinforced cementitious material that is *continuous* with the cementitious material of the first and second face panels. Moreover, the Bair '916 patent nowhere discloses a support frame of a same cementitious material being located *between* first

and second cementitious face panels as recited in independent claim 1.

The Rizk '404 patent does not account for the deficiencies of the Jasperson '384 patent and the deficiencies of the Bair '916 patent. The Rizk '404 patent discloses a building panel produced from glass reinforced concrete and including a body having an exterior surface having a predetermined characteristic. However, the Rizk '404 patent nowhere discloses a support frame that is formed of a same fiber-reinforced cementitious material that is *continuous* with the cementitious material of the first and second face panels. Moreover, the Rizk '404 patent nowhere discloses a support frame of a same cementitious material being located *between* first and second cementitious face panels as recited in independent claim 1. As such, claim 1 is patentable over the cited prior art.

Claims 4 – 6 ultimately depend from claim 1; therefore, claims 4 – 6 contain all of the limitations thereof and are not rendered obvious by the cited references because none of said references, singularly or collectively, teaches a cementitious support frame located between first and second cementitious face panels as claimed in amended independent claim 1. Therefore, reconsideration and withdrawal of the rejections is respectfully requested.

#### **Rejection Under 35 U.S.C. §103(a): Jasperson in View of Bair**

The Examiner rejected claims 1, 4 and 7 as being unpatentable over the Jasperson '384 patent in view of the Bair '916 patent.

#### **Response**

By this Response and Amendment, Applicants respectfully traverse the Examiner's rejections.

The arguments made with respect to the rejections of claims 1, 2 and 10 under §102 and with respect to the rejections of claims 1 and 4 – 6 under §103 are incorporated herein by reference.

In view of the above referenced arguments, claim 1 is patentable over the cited prior art. Moreover, as claims 4 and 7 ultimately depend from claim 1, claims 4 and 7 contain all of the limitations of claim 1 and, therefore, are not rendered obvious by the cited reference. Accordingly, reconsideration and withdrawal of the rejections is respectfully requested.

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**Rejection Under 35 U.S.C. §103(a): Jasperson in View of Bair and in Further View of Siler**

The Examiner rejected claims 1, 4, 8 and 9 as being unpatentable over the Jasperson '384 patent in view of the Bair '916 and in further view of the Siler '389 patent.

**Response**

By this Response and Amendment, Applicants respectfully traverse the Examiner's rejection.

The arguments made above with respect to the rejections of claims 1, 2 and 10 under §102 and with respect to the rejections of claims 1, 4 and 7 under 35 U.S.C. under §103(a) are incorporated herein by reference.

As stated above, the Examiner has not shown that the Jasperson '384 patent contains all of the limitations of independent claim 1. Moreover, the Bair '916 patent does not teach nor suggest a support frame of a same cementitious material that is continuous with the cementitious material of the first and second face panels and disposed therebetween as claimed in independent claim 1.

The Siler '389 patent does not account for the deficiencies of the Jasperson '384 patent

and the Bair '916 patent. The Siler '389 patent discloses a method of constructing building structures involving a plurality of vertical posts that support a plurality of horizontal beams. The Siler '389 patent nowhere discloses a support frame that is formed of a same fiber-reinforced cementitious material that is *continuous* with the cementitious material of the first and second face panels. Moreover, the Siler '289 patent nowhere discloses a support frame of a same cementitious material being located *between* first and second cementitious face panels as recited in independent claim 1. As such, claim 1 is patentable over the cited prior art.

Claims 4, 8 and 9 ultimately depend from claim 1; therefore, claims 4, 8 and 9 contain all of the limitations thereof and are not rendered obvious by the cited references because none of said references, singularly or collectively, teaches a same cementitious support frame located between first and second cementitious face panels as claimed in independent claim 1. Therefore, reconsideration and withdrawal of the rejections is respectfully requested.

#### **Rejections Under 35 U.S.C. §103(a): Jasperson In View of Schupack**

The Examiner rejected claims 1 and 11 as being unpatentable over the Jasperson '384 patent in view of the Schupack '219 patent.

#### **Response**

By this Response and Amendment, Applicants respectfully traverse the Examiner's rejections.

The arguments made with respect to the rejections of claims 1, 2 and 10 under §102 and claims 1 – 3 under §103 are incorporated herein by reference.

The Jasperson '384 patent generally teaches a composite structure having an interior



substrate, a layer of rigid insulation, and a layer of cementitious material. However, nowhere in the cited reference, does the Jasperson '384 patent teach a support frame or ribs that are disposed between and continuous with the cementitious material of the first and second face panels.

The Schupack '219 patent does not make up for deficiencies of the Jasperson '384 patent. The Schupack '219 patent teaches a reinforced cement structure having at least one nonwoven spatial fabric-reinforcing layer. The Schupack '219 patent nowhere discloses a support frame that is formed of a same fiber-reinforced cementitious material that is *continuous* with the cementitious material of the first and second face panels. Moreover, the Schupack '219 patent nowhere discloses a support frame of a same cementitious material being located *between* first and second cementitious face panels.

The Examiner has not shown that the primary reference nor the secondary reference alone or in combination contains all of the limitations of independent claim 1. In particular, neither reference teaches a cementitious support frame of a same cementitious material that is continuous with the cementitious material of the first and second face panels and disposed therebetween as claimed independent claim 1. Thus, claim 1 is patentable over the cited prior art. Moreover, as claim 11 ultimately depends from claim 1, claim 11 contains all of the limitations of amended claim 1 and, therefore, is not rendered obvious by the cited reference. Accordingly, reconsideration and withdrawal of the rejections is respectfully requested.

#### **NEWLY SUBMITTED CLAIMS**

New claims 12 – 14 disclose a method for producing a sandwich panel. None of the cited prior art references discloses each of the limitations of any of claims 12 – 14. The cited

references do not disclose forming a support frame with a cementitious material that is continuous with a same cementitious material of first and second face panels and disposed therebetween as claimed in claims 12 – 14. Claims 12 – 14 are therefore asserted to be patentable thereover.

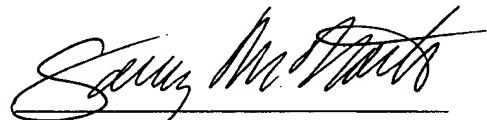
### CONCLUSION

In light of the foregoing, Applicants submit that the application is now in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicants respectfully request that the Examiner contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

Respectfully submitted,

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